DOCKET NO: 235016US26

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:	
Jean-Pascal HIRT, et al.	:	EXAMINER: FOREMAN, J. M.
SERIAL NO: 10/674,491	:	
FILED: OCTOBER 1, 2003	:	GROUP ART UNIT: 3736
FOR: AN EVALUATION OR DIAGNOSTIC KIT	:	

APPEAL BRIEF WITH APPENDICES

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is an appeal from a final Office Action Mailed January 14, 2008. A Notice of Appeal was timely filed on May 14, 2008.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is L'OREAL having an address at 14 RUE ROYALE, 75008 PARIS, FRANCE. L'OREAL is the real party in interest by way of assignment recorded in the U.S. Patent and Trademark Office at reel 015015, frame 0965.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative and the assignees are aware of no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

Claims 1-25, 30, 32-56, and 71-83 are pending, with Claims 2, 3, 14-16, 21, 23-25, 46-48, 53, 55, 56 and 72 being withdrawn from consideration. Claims 1, 4-13, 17-20, 22, 30, 32-45, 49-52, 54, 71, and 73-83 stand rejected, Claims 26-29, 31, and 57-70 are canceled, and the rejection of Claims 1, 4-6, 13, 17-20, 22, 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76, and 80-83 is herein appealed.

IV. STATUS OF THE AMENDMENTS

In a Final Office Action mailed January 14, 2008 (hereinafter "Final Action"), the Examiner finally rejected Claims 1, 4-13, 17-20, 22, 30, 32-45, 49-52, 54, 71, and 73-83. No amendments to the claims have been submitted after the mailing of the Final Action. The attached Claims Appendix (section VIII) reflects Claims 1-25, 30, 32-56, and 71-83 as presently pending on appeal.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER[1]

A. CLAIM 1.

The claimed invention, as recited in independent Claim 1, is directed to an evaluation or diagnostic kit. Examples of the claimed evaluation or diagnostic kit are shown in Figures 1 and 5, for example. The kit includes a plurality of applicators (20) containing different test substances and a housing (11) in which the applicators are housed.[2] Each applicator (20) includes a tube (21), a plug (24) inside the tube (21), and at least one test substance contained in an inside space of the tube defined at a first end by the plug (24).[3] The plug is arranged, in use, to be expelled together with the test substance when the test substance leaves the inside space of the tube.[4]

B. CLAIM 30.

The claimed invention, as recited in independent Claim 30, is directed to an evaluation or diagnostic kit. Examples of the claimed evaluation or diagnostic kit are shown in Figures 1, 5, and 6, for example. The kit includes a plurality of applicators (20) containing test substances with at least one compound at different concentrations.[5] Each applicator includes a tube (21), a plug (24) inside the tube (21), and at least one test substance in an

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[1] It is Appellants' understanding that, under the rules of Practice before the Board of Patent Appeals and Interference, 37 C.F.R. § 41.37(c) requires that a concise explanation of the subject matter recited in each independent claim be provided with reference to the specification by page and line numbers and to the drawings by reference characters. However, Appellants' compliance with such requirements anywhere in this document should in no way be interpreted as limiting the scope of the invention recited in all pending claims, but simply as non-limiting examples thereof.

[2] See Appellants' specification as originally filed at page 7, paragraph [0056] with reference to Figures 1 and 5, for example; and at page 8, paragraph [0063].

[3] See Appellants' specification as originally filed at page 7, paragraphs [0057] and [0058], for example, with reference to Figures 1 and 5, for example.

[4] See Appellants' specification as originally filed at page 7, paragraph [0060] with reference to Figures 1 and 5, for example.

[5] See Appellants' specification as originally filed at page 7, paragraph [0056] with reference to Figures 1 and 5, for example; and at page 8, paragraph [0064].

inside space of the tube defined at a first end by the plug (24).[6] The plug is arranged, in use, to be expelled together with the test substance when said test substance leaves the inside space of the tube.[7] The kit further includes at least two test substances with at least one compound at concentrations varying by a factor of at least two from one applicator to another.[8]

C. CLAIM 71.

The claimed invention, as recited in independent Claim 71, is directed to a system for evaluating a sensitivity. Examples of the claimed evaluation or diagnostic kit are shown in Figures 1 and 5, for example. The system includes a packaging (11) and a plurality of tubes (21) provided in the packaging (11).[9] Each tube (21) includes a first end which is open, a second end which is closed in a first position, and a substance contained in an inside space of the tube in the first position.[10] The second end is movable to a second position which is open.[11] The substance is in communication with an outside of the container via the first open end in the second position.[12] The second end is attached to the tube in the second position.[13] The tubes include different test substances or test substances with at least one compound at

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[6] See Appellants' specification as originally filed at page 7, paragraphs [0057] and [0058], for example, with reference to Figures 1 and 5, for example.
[7] See Appellants' specification as originally filed at page 7, paragraph [0060] with reference to Figures 1 and 5, for example.
[8] See Appellants' specification as originally filed at page 9, paragraph [0076].
[9] See Appellants' specification as originally filed at page 7, paragraph [0056] with reference to Figures 1 and 5, for example.
[10] See Appellants' specification as originally filed at page 7, paragraph [0058] with reference to Figures 2-4, for example.
[11] See Appellants' specification as originally filed at page 7, paragraph [0058] with reference to Figures 2-4, for example.
[12] See Appellants' specification as originally filed at page 7, paragraph [0058] with reference to Figures 2-4, for example.
[13] See Appellants' specification as originally filed at page 7, paragraph [0058] with reference to Figures 2-4, for example.

different concentrations.[14] The packaging includes a housing (11) in which the tubes (21) are housed.[15]

D. CLAIM 80.

Claim 80 depends from Claim 1 and recites further features of the kit. The kit includes at least three applicators. A first applicator includes a first tube containing a first test substance, a second applicator includes a second tube containing a second test substance, and a third applicator includes a third tube containing a third test substance.[16] The first test substance is different from the second and third test substances, and the second test substance is different from the third test substance.[17]

E. CLAIM 81.

Claim 81 depends from Claim 30 and recites further features of the kit. The kit includes at least three applicators. A first applicator includes a first tube containing a first test substance containing a compound at a first concentration, a second applicator includes a second tube containing a second test substance including the compound at a second concentration, and a third applicator includes a third tube containing a third test substance including the compound at a third concentration.[18] The first concentration is different from

[14] See Appellants' specification as originally filed at page 8, paragraph [0064], for example.
[15] See Appellants' specification as originally filed at page 7, paragraph [0056] with reference to Figures 1 and 5, for example.
[16] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[17] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[18] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.

the second and third concentrations, and the second concentration is different from the third concentration.[19]

F. CLAIM 82.

Claim 82 depends from Claim 71 and recites further features of the system. The system includes at least three tubes. A first tube contains a first test substance, a second tube contains a second test substance, and a third tube contains a third test substance.[20] The first test substance is different from the second and third test substances, and the second test substance is different from the third test substance.[21]

G. CLAIM 83.

Claim 83 depends from Claim 71. The system includes at least three tubes. A first tube contains a first test substance including a compound at a first concentration, a second tube contains a second test substance including the compound at a second concentration, and a third tube contains a third test substance including the compound at a third concentration.[22] The first concentration is different from the second and third concentrations, and the second concentration is different from the third concentration.[23]

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[19] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[20] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[21] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[22] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.
[23] See Appellants' specification as originally filed at page 8, paragraphs [0063] and [0064] with reference to Figure 1, for example.

VI. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Whether Claims 1, 4-6, 13, 17-20, 22, and 80 are unpatentable 35 U.S.C. § 103(a) as obvious over Zhang (U.S. Patent No. 6,343,717) in view of Muhar (U.S. Patent No. 6,254,294).

Whether Claims 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 and 81-83 are unpatentable under 35 U.S.C. § 103(a) as obvious over Zhang in view of Schindler (U.S. Patent No. 6,358,231).

VII. ARGUMENT

A. THE REJECTION OF CLAIMS 1, 4-6, 13, 17-20, 22, AND 80 UNDER 35 U.S.C. § 103(A) AS UNPATENTABLE OVER ZHANG IN VIEW OF MUHAR.

1. Claims 1, 4-6, 13, 17-20, and 22.

Claim 1 relates to an evaluation or diagnostic kit. Claim 1 recites that the evaluation or diagnostic kit includes *a plurality of applicators containing different test substances* and *a housing in which the applicators are housed.*

Turning to the applied references, Zhang describes individual pipettes 40, as can be seen in Figure 11 of Zhang. Zhang describes that the pipette body 40 is pre-filled with the liquid 48, which consists of a pharmaceutical or cosmetic substance.[24] The liquid 48 may be comprised of an aqueous solution, a true solution, oil, solvent, emulsion, cream, ointment, lotion, suspension, paste, jelly, syrup, balm or any other similar substance that may be transported and/or stored in a container.[25] However, Zhang fails to disclose or render obvious a kit that includes: (1) a plurality of applicators containing *different* test substances and (2) *a housing in which the applicators are housed.* Instead, Zhang merely describes that individual pipettes 40 can be individually filled. Indeed, the Final Action acknowledges that "Zhang fails to disclose a housing having a plurality of applicators containing different substances."[26]

The Final Action attempts to cure the deficiency in Zhang by applying Muhar, stating that "Muhar teach a kit having a housing with compartments for containing different test substances (40, 74). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a plurality of applicators each with a different test

[24] See Zhang, at col. 5, lines 19-20.
[25] See Zhang, at col. 5, lines 20-25.
[26] See the Final Action at page 3, lines 4-5.

substance in a housing having compartments as taught by Muhar in order to create a treatment kit to raise the awareness of a treatment choice to a consumer (Col. 5, lines 47 - 56)."[27] However, Muhar fails to disclose or render obvious a plurality of *applicators* containing *different* test substances.

Figure 1 of Muhar illustrates a pharmaceutical kit 10 that includes a container 14 in which is provided a packet of dispensing swabs 28, a bottle 40, and a tube 74.[28] Muhar describes that liquid iodine 70 is located in the bottle 40, and that a quantity of zinc oxide 90 is located in the tube 74.[29] Muhar further describes that the dispensing swabs 28 are individually used to dispense the liquid iodine 70 from the bottle 40.[30] Thus, Muhar does not disclose a plurality of *applicators* containing *different* test substances, but instead describes a tube that contains a first substance, a bottle that contains a second substance, and a plurality of dispensing swabs that are changed between utilizations of the bottle.

Further, Claim 1 recites *test* substances. These *test* substances are part of the recited "evaluation or diagnostic kit." It is submitted that neither Iodine nor Zinc oxide are *test* substances. In particular, Muhar states that "Iodine is an antimicrobial, a halogen containing compound,"[31] and that "Zinc is a mildly antibacterial and healing agent."[32] Neither an "antimicrobial" nor a "mildly antibacterial and healing agent" are *test* substances, as recited in Claim 1.

Accordingly, even the combined teachings of Zhang and Muhar fail to disclose, suggest or render obvious all of the features of independent Claim 1. It is respectfully

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[27] See the outstanding Office Action at page 3, lines 5-10.
[28] See Muhar, at col. 4, lines 11-62.
[29] See Muhar, at col. 4, lines 52-64.
[30] See Muhar, at col. 4, lines 29-51.
[31] See Muhar, at col. 5, lines 57-58.
[32] See Muhar, at col. 6, line 6.

requested that the rejection of independent Claim 1 and Claims 4-6, 13, 17-20, and 22 depending therefrom be reversed.

2. Claim 80.

Claim 80 depends from Claim 1 and recites that the kit comprises *at least three applicators*. A first applicator includes a first tube containing *a first test substance*, a second applicator includes a second tube containing *a second test substance*, and a third applicator includes a third tube containing *a third test substance*. The first test substance is different from the second and third test substances, and the second test substance is different from the third test substance.

An Advisory Action dated June 26, 2008 clarifies the Final Rejection, stating that:

> Zhang et al. disclose an applicator that can be pre-filled with a liquid comprised of an aqueous solution, a true solution, oil, solvent, emulsion, cream, ointment, lotion, suspension, paste jelly syrup, balm or any other similar substance that may be transported and/or stored in a container (Col. 5, lines 19 - 25). Muhar teaches a kit having a housing with compartments for containing different test substances (liquid iodine and zinc oxide). It would have been obvious to provide a plurality of applicators disclosed by Zhang et al., one filled with liquid iodine and one with zinc oxide as taught by Muhar and to place these applicators in a housing as taught by Muhar in order to create a treatment kit to raise the awareness of a treatment choice to a consumer (Col. 5, lines 47 - 56).

However, even assuming *arguendo* (1) that it would be obvious to replace the packet of dispensing swabs 28, a bottle 40, and a tube 74 in the pharmaceutical kit 10 of Muhar with the pipettes 40 of Zhang; (2) that it would further be obvious to fill at least one of the pipettes 40 of Zhang with zinc oxide (as in the tube 74 of Muhar), and to fill at least one of the pipettes 40 of Zhang with liquid iodine (as in the bottle 40 of Muhar); and (3) that Iodine and Zinc oxide were interpreted as *test* substances, the combination of Zhang and Muhar would

still fail to disclose or render obvious every element recited in Claim 80. In particular, Claim 80 recites that the kit comprises *at least three applicators*, that *a first test substance* included in the first applicator is different from *second* and *third* test substances in the second and third applications, and that the second test substance is different from the third test substance. Zinc oxide and liquid iodine are only *two* different substances, not the *three* different test *substances* recited in Claim 80.

Accordingly, even the combined teachings of Zhang and Muhar fail to disclose, suggest or render obvious all of the features of dependent Claim 80. It is respectfully requested that the rejection of dependent Claim 80 be reversed.

B. THE REJECTION OF CLAIMS 30-32, 35-38, 45, 49-52, 54, 71, 73, 74, 76 AND 81-83 UNDER 35 U.S.C. § 103(A) AS UNPATENTABLE OVER ZHANG IN VIEW OF SCHINDLER.

1. Claim 30.

Claim 30 relates to an evaluation or diagnostic kit. The kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Claim 30 further recites that the kit further includes at least two test substances with at least one compound at concentrations *varying by a factor of at least two* from one applicator to another.

As discussed above with reference to independent Claim 1, Zhang fails to describe a kit that includes a plurality of applicators, much less kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Figure 7 of Schindler illustrates a kit 60 that includes a tweezers 62, a compressed applicator 14 with a

withdrawal tether 18 attached thereto, and a pair of fluid-injecting devices 64 having plugs 66 inserted into the distal ends thereof.[33]

With respect to independent Claim 30, the Final Action states that "Schindler et al. teach the use of at least two substances with at least one compound at concentrations varying by a factor of at least two from one to another, the substance being a stimulating agent for stimulating a peripheral nervous system (Col. 1, lines 58 - 63)."[34] The cited portion of Schindler states that:

> For example, solution concentrations on the order of 0.5% Tetracaine have been used in ophthalmic applications, concentrations of 1 to 2% have been used in the mouth or nose and applied as a spray, and 0.1 to 0.5% solutions have been used in spinal or epidural applications.

However, regardless of whether the background of Schindler describes that different concentrations can be used for different types of applications, Schindler does not disclose that a *single kit* includes a plurality of tubes provided in a packaging in which at least two test substances with at least one compound at concentrations varying by a factor of at least two from one applicator to another, as recited in Claim 30.

Instead, Schindler describes, from column 7, line 63 to column 8, line 17, a kit 60 that includes a pair of fluid-injecting devices 64 that each include the *same compound* at the *same concentration*. Indeed, acknowledging that the additional injector simply provides more of the same substance, Schindler states that "[o]f course one device 64 will suffice if its

[33] See Schindler at col. 7, lines 57-61.
[34] See the Final Action at page 6, lines 9-11.

reservoir has sufficient capacity to accommodate enough anesthetic solution for performing the anesthetizing procedure."[35]

Further, Schindler states that "concentrations of 1 to 2% have been used in the mouth or nose and *applied as a spray*."[36] As Zhang describes *pipettes* and makes no mention of spraying, it is submitted that it would not be obvious to include the concentration necessary for the mouth and nose in the pipettes described in Zhang.

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or render obvious the features of independent Claim 30. It is respectfully requested that the rejection of Claim 30 and Claims 31, 32, 35-38, 45, 49-52, and 54 depending therefrom be reversed.

2. Claim 71.

Claim 71 relates to a system for evaluating a sensitivity. The system includes a packaging and a plurality of tubes provided in the packaging. Claim 71 recites that the tubes include different test substances or test substances with *at least one compound at different concentrations*. Claim 71 further recites that the packaging includes a housing in which the tubes are housed.

As discussed above with respect to Claim 30, Zhang fails to describe a kit that includes a plurality of applicators, much less kit includes a plurality of applicators containing test substances with at least one compound at different concentrations. Moreover, regardless of whether the background of Schindler describes that different concentrations can be used for different types of applications, Schindler does not disclose that a *single kit* includes a

[35] See Schindler, at col. 7, lines 65-67.
[36] See Schindler, at col. 1, lines 58-63, emphasis added.

plurality of tubes that include different test substances or test substances with *at least one compound at different concentrations*. Instead, Schindler describes, from column 7, line 63 to column 8, line 17, a kit 60 that includes a pair of fluid-injecting devices 64 that each include the *same compound* at the *same concentration*.

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or render obvious the features of independent Claim 71. It is respectfully requested that the rejection of Claim 71 and Claims 73, 74, and 76 depending therefrom be reversed.

3. Claim 81.

Claim 81 depends from Claim 30, and recites that the kit includes *at least three* applicators. A first applicator includes a first tube containing *a first test substance* comprising a compound at *a first concentration*, a second applicator including a second tube containing *a second test substance* including the compound *at a second concentration*, and a third applicator including *a third tube* containing a third test substance including the compound at *a third concentration*. The first concentration is different from the second and third concentrations, and the second concentration is different from the third concentration.

An Advisory Action dated June 26, 2008 clarifies the Final Rejection, stating that:

> It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of the teaching of Schindler et al., to include within a kit a stimulating agent in varying concentrations to allow a physician to choose which stimulating agent to use in order to anesthetize the eye, mouth or ear of a patient as needed (Col. 1, lines 45 - 67).

However, Schindler states that "solution concentrations on the order of 0.5% Tetracaine have been used in ophthalmic applications, concentrations of 1 to 2% have been used in the mouth or nose and applied as a spray, and 0.1 to 0.5% solutions have been used in

spinal or epidural applications."[37] Thus, even if one were "to include within a kit a stimulating agent in varying concentrations to allow a physician to choose which stimulating agent to use in order to anesthetize the eye, mouth or ear of a patient as needed" as suggest by the Advisory Action, Schindler states that only requires *two* different concentrations: (1) solution concentrations on the order of 0.5% for the eye, and (2) concentrations of 1 to 2% have been used in the mouth or nose. By contrast, Claim 81 recites *three separate applicators* that each include a test substance at *three different concentrations*.

Further, Schindler states that "concentrations of 1 to 2% have been used in the mouth or nose and *applied as a spray*."[38] As Zhang describes *pipettes* and makes no mention of spraying, it is submitted that it would not be obvious to include the concentration necessary for the mouth and nose in the pipettes described in Zhang.

Moreover, it would not have been obvious include the 0.1 to 0.5% solutions that Schindler describes have been used in spinal or epidural applications because the pipettes described in Zhang are in no way suitable to perform a spinal or epidural administration of anesthetic. Nor would it be obvious to include such concentrations in a kit with concentrations used for eyes, ears, or mouth, as it is submitted that spinal or epidural applications are of such a different nature than ear, nose, and mouth applications that their inclusion in the same kit would be more likely to create physician error than enhance convenience and choice.

[37] See Schindler, at col. 1, lines 58-63.
[38] See Schindler, at col. 1, lines 58-63, emphasis added.

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or render obvious the features of dependent Claim 81. It is respectfully requested that the rejection of Claim 81 be reversed.

4. Claim 82.

Claim 82 depends from Claim 71, and recites that the system includes at least three tubes. A first tube contains a first test substance, a second tube contains a second test substance, and a third tube contains a third test substance. The first test substance *is different from* the second and third test substances, and the second test substance *is different from* the third test substance.

Even assuming, *arguendo*, that it would be obvious in view of the teaching of Schindler et al., to include within a kit a stimulating agent in varying concentrations to allow a physician to choose which stimulating agent to use in order to anesthetize the eye, mouth or ear of a patient as needed, as proposed in the Advisory Action of June 26, 2008, such a combination would not meet all of the limitations of Claim 82. In particular, at most, Schindler describes different combinations of the *same compound* (Tetracaine) for different applications. By contrast, Claim 82, in combination with Claim 71, recites *three different tubes* that each contain *three different test substances* at *three different concentrations*. A *single* compound at different levels of concentration does not meet this limitation.

Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or render obvious the features of dependent Claim 82. It is respectfully requested that the rejection of Claim 82 be reversed.

5. Claim 83.

Claim 83 depends from Claim 71, and recites that the system includes at least *three tubes*. A first tube contains *a first test substance* including a compound at *a first concentration*, a second tube contains *a second test substance* including the compound at *a second concentration*, and a third tube contains *a third test substance* including the compound at *a third concentration*. The first concentration is different from the second and third concentrations, and the second concentration is different from the third concentration.

As discussed above with reference to Claim 81, the combined teachings of Zhang and Schindler fail to disclose or render obvious *three separate applicators* that each include a test substance at *three different concentrations*.

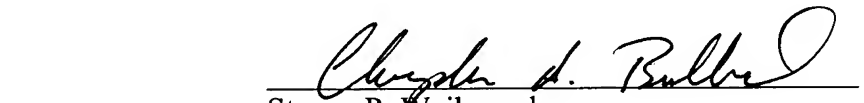
Accordingly, even the combined teachings of Zhang and Schindler fail to disclose or render obvious the features of dependent Claim 83. It is respectfully requested that the rejection of Claim 83 be reversed.

C. CONCLUSION

In view of the foregoing, it is respectfully submitted that the cited references, whether considered alone or in combination, fail to disclose or render obvious the combined features set forth in independent Claims 1, 30, or 71. Accordingly, it is respectfully requested that the rejections of Claims 1, 30, or 71 and the claims depending therefrom be reversed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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VIII. CLAIMS APPENDIX

Please amend the claims as follows:

Claim 1 (Rejected): An evaluation or diagnostic kit comprising a plurality of applicators containing different test substances and a housing in which the applicators are housed, each applicator comprising:

a tube;

a plug inside the tube; and

at least one test substance contained in an inside space of the tube defined at a first end by the plug, the plug being arranged, in use, to be expelled together with the test substance when said test substance leaves the inside space of the tube.

Claim 2 (Withdrawn): The kit according to Claim 1, wherein the test substances comprise different allergens.

Claim 3 (Withdrawn): The kit according to Claim 2, wherein the allergens are selected from the group consisting of allergens originating from acarids, animal hairs and scales, mold, hymenoptera venoms, foodstuffs, metals, rubber, any compound that can be found in substances designed to be applied on the body or the hair.

Claim 4 (Rejected): The kit according to Claim 1, wherein the housing includes compartments in which the applicators are housed.

Claim 5 (Rejected): The kit according to Claim 4, wherein the housing includes at least one compartment configured to receive a single applicator.

Claim 6 (Rejected): The kit according to Claim 4, wherein the housing includes at least one compartment configured to receive a plurality of applicators.

Claim 7 (Rejected): The kit according to Claim 1, further comprising at least one bag for packaging at least one applicator.

Claim 8 (Rejected): The kit according to Claim 7, further comprising a string of bags each containing at least one applicator.

Claim 9 (Rejected): The kit according to Claim 1, wherein each applicator includes at least one mark corresponding to at least one of a type of test substance inside the tube and a concentration of a compound contained in the test substance.

Claim 10 (Rejected): The kit according to Claim 9, wherein the mark comprises at least one of an alphanumeric symbol and a color.

Claim 11 (Rejected): The kit according to Claim 1, wherein the test substance in the tube has a volume in a range from 0.01 ml to 5 ml.

Claim 12 (Rejected): The kit according to Claim 1, wherein test substance in the tube has a volume in a range from 0.05 ml to 1 ml.

Claim 13 (Rejected): The kit according to Claim 1, wherein the inside space is defined at a second end, remote from the first, by a breakable portion.

Claim 14 (Withdrawn): The kit according to Claim 1, wherein the inside space is defined at a second end, remote from the first, by a removable portion.

Claim 15 (Withdrawn): The kit according to Claim 1, wherein the inside space is defined at a second end, remote from the first, by a perforatable portion.

Claim 16 (Withdrawn): The kit according to Claim 1, wherein the inside space is defined at a second end, remote from the first, by a deformable portion.

Claim 17 (Rejected): The kit according to Claim 13, wherein the applicator includes a retaining element for retaining the breakable portion on the applicator after it has been broken off.

Claim 18 (Rejected): The kit according to Claim 1, wherein the tube is provided at one end with an applicator element, the applicator element being separated from the test substance prior to use, by the plug.

Claim 19 (Rejected): The kit according to Claim 18, wherein the applicator element is selected from the group consisting of a cotton bud, a foam bud, a felt tip, a flocked bud, and a tip made of ceramic or of sintered material.

Claim 20 (Rejected): The kit according to Claim 1, wherein the tube is free of an applicator element.

Claim 21 (Withdrawn): The kit according to Claim 20, wherein the tube includes an end configured so as to be able to scarify the skin.

Claim 22 (Rejected): The kit according to Claim 1, wherein the plug comprises a liquid, and wherein said liquid is selected from the group consisting of mineral oils, fluorine-containing substances, and silicones.

Claim 23 (Withdrawn): The kit according to Claim 1, wherein the plug comprises a powder, and wherein said powder is selected from the group consisting of powders of microspheres of copolymers, of Nylon®, of waxes, of silicas, and of silicones.

Claim 24 (Withdrawn): The kit according to Claim 1, wherein the plug comprises one of a liquid and a powder.

Claim 25 (Withdrawn): The kit according to Claim 3, wherein said allergen comprises nickel.

Claims 26-29 (Canceled).

Claim 30 (Rejected): An evaluation or diagnostic kit comprising a plurality of applicators containing test substances with at least one compound at different concentrations, each applicator comprising:

a tube;

a plug inside the tube; and

at least one test substance in an inside space of the tube defined at a first end by the plug, the plug being arranged, in use, to be expelled together with the test substance when said test substance leaves the inside space of the tube,

and the kit further comprising at least two test substances with at least one compound at concentrations varying by a factor of at least two from one applicator to another.

Claim 31 (Canceled).

Claim 32 (Rejected): The kit according to Claim 30, wherein at least one substance comprises a stimulating agent for stimulating a peripheral nervous system.

Claim 33 (Rejected): The kit according to Claim 32, wherein the stimulating agent for stimulating the peripheral nervous system is selected from the group consisting of natural or synthetic capsaicinoids, homocapsaicin, homodihydrocapsaicin, nordihydrocapsaicin, dihydrocapsaicin; lactic acid, glycolic acid, ethanol at a concentration greater than 50% and mustard seed oil.

Claim 34 (Rejected): The kit according to Claim 33, wherein said stimulating agent comprises capsaicin

Claim 35 (Rejected): The kit according to Claim 32, wherein a concentration of the stimulating agent for stimulating the peripheral nervous system lies in a range from 10-6% to 10-2% by weight.

Claim 36 (Rejected): The kit according to Claim 30, further comprising a housing including compartments in which the applicators are housed.

Claim 37 (Rejected): The kit according to Claim 36, wherein the housing includes at least one compartment configured to receive a single applicator.

Claim 38 (Rejected): The kit according to Claim 36, wherein the housing includes at least one compartment configured to receive a plurality of applicators.

Claim 39 (Rejected): The kit according to Claim 30, further comprising at least one bag for packaging at least one applicator.

Claim 40 (Rejected): The kit according to Claim 39, further comprising a string of bags each containing at least one applicator.

Claim 41 (Rejected): The kit according to Claim 30, wherein each applicator includes at least one mark corresponding to at least one type of test substance inside the tube and a concentration of the compound in the test substance.

Claim 42 (Rejected): The kit according to Claim 41, wherein the mark comprises at least one of an alphanumeric symbol and a color.

Claim 43 (Rejected): The kit according to Claim 30, wherein the test substance in the tube has a volume in a range from 0.01 ml to *5* ml.

Claim 44 (Rejected): The kit according to Claim 30, wherein the test substance in the tube has a volume in a range from 0.05 ml to 1 ml.

Claim 45 (Rejected): The kit according to Claim 30, wherein the inside space is defined at a second end, remote from the first, by a breakable portion.

Claim 46 (Withdrawn): The kit according to Claim 30, wherein the inside space is defined at a second end, remote from the first, by a removable portion.

Claim 47 (Withdrawn): The kit according to Claim 30, wherein the inside space is defined at a second end, remote from the first, by a perforatable portion.

Claim 48 (Withdrawn): The kit according to Claim 30, wherein the inside space is defined at a second end, remote from the first, by a deformable portion.

Claim 49 (Rejected): The kit according to Claim 45, wherein each applicator includes a retaining element for retaining the breakable portion on the applicator after it has been broken off.

Claim 50 (Rejected): The kit according to Claim 30, wherein the tube is provided at one end with an applicator element, the applicator element being separated from the test substance prior to use, by the plug.

Claim 51 (Rejected): The kit according to Claim 50, wherein the applicator element is selected from the group consisting of a cotton bud, a foam bud, a felt tip, a flocked bud, and a tip made of ceramic or of sintered material.

Claim 52 (Rejected): The kit according to Claim 30, wherein the tube is free of an applicator element.

Claim 53 (Withdrawn): The kit according to Claim 52, wherein the tube includes an end configured so as to be able to scarify the skin.

Claim 54 (Rejected): The kit according to Claim 30, wherein the plug comprises a liquid, and wherein said liquid is selected from the group consisting of mineral oils, fluorine-containing substances, and silicones.

Claim 55 (Withdrawn): The kit according to Claim 30, wherein the plug comprises a powder, and wherein said powder is selected from the group consisting of powders of microspheres of copolymers, of Nylon®, of waxes, of silicas, and of silicones.

Claim 56 (Withdrawn): The kit according to Claim 30, wherein said plug comprises one of a liquid and a powder.

Claims 57-70 (Canceled).

Claim 71 (Rejected): A system for evaluating a sensitivity, comprising:

a packaging; and

a plurality of tubes provided in said packaging, each tube comprising:

a first end which is open,

a second end which is closed in a first position,

a substance contained in an inside space of the tube in said first position,

wherein said second end is movable to a second position which is open, said substance being in communication with an outside of said container via said first open end in said second position, and

wherein said second end is attached to said tube in said second position,

wherein said tubes comprise different test substances or test substances with at least one compound at different concentrations,

wherein the packaging comprises a housing in which the tubes are housed.

Claim 72 (Withdrawn): The system of Claim 71, wherein said substance is an allergen.

Claim 73 (Rejected): The system of Claim 71, wherein said substance is a stimulating agent.

Claim 74 (Rejected): The system of Claim 71, wherein each of said tube further comprises a removable plug provided inside said tube in said first position, said removable plug defining a closed volume between said plug and said second end in said first position.

Claim 75 (Rejected): The system of Claim 71, wherein each of said tube further comprises a thermoreversible thickener inside said volume.

Claim 76 (Rejected): The system of Claim 71, wherein said packaging comprises a box.

Claim 77 (Rejected): The system of Claim 71, wherein said packaging comprises a plurality of bags, each of said tubes being in one of said bags.

Claim 78 (Rejected): The system of Claim 71, wherein said packaging comprises:

a stand; and

a body mounted on said stand.

Claim 79 (Rejected): The system of Claim 78, wherein each of said tubes has a portion extending outside said body, and wherein said packaging further comprises a closure cap coupled to said body and over said portions.

Claim 80 (Rejected): The kit according to Claim 1, wherein said kit comprises at least three applicators, a first applicator comprising a first tube containing a first test substance, a second applicator comprising a second tube containing a second test substance, and a third applicator comprising a third tube containing a third test substance, wherein said first test substance is different from said second and third test substances, and said second test substance is different from said third test substance.

Claim 81 (Rejected): The kit according to Claim 30, wherein said kit comprises at least three applicators, a first applicator including a first tube containing a first test substance comprising a compound at a first concentration, a second applicator including a second tube containing a second test substance comprising said compound at a second concentration, and a third applicator including a third tube containing a third test substance comprising said compound at a third concentration, wherein said first concentration is different from said second and third concentrations, and said second concentration is different from said third concentration.

Claim 82 (Rejected): The system according to Claim 71, wherein said system comprises at least three tubes, a first tube containing a first test substance, a second tube containing a second test substance, and a third tube containing a third test substance, wherein said first test substance is different from said second and third test substances, and said second test substance is different from said third test substance.

Claim 83 (Rejected): The system according to Claim 71, wherein said system comprises at least three tubes, a first tube containing a first test substance comprising a compound at a first concentration, a second tube containing a second test substance comprising said compound at a second concentration, and a third tube containing a third test substance comprising said compound at a third concentration, wherein said first concentration is different from said second and third concentrations, and said second concentration is different from said third concentration.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.